

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY A. QUANDT
Claimant

VS.

IBP, INC.
Self-Insured Respondent

AND

WORKERS COMPENSATION FUND

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Docket No. 184,591

ORDER

This claim returns to the Board¹ pursuant to the Kansas Court of Appeals' January 11, 2008, order for remand. On May 28, 2008, the Kansas Supreme Court denied respondent's petition for review.

This is a claim for a March 26, 1993, accident. In summary, when this claim was initially litigated claimant was awarded a 79.25 percent permanent partial disability for injuries to her neck and right knee, which was assessed against the Kansas Workers Compensation Fund (Fund).

Claimant then sought medical treatment for her low back, which was granted and also assessed against the Fund. The Board found, among other things, in its April 14, 2006, Order that claimant's low back injury was a natural consequence of her knee injury and, therefore, the Fund was held responsible for the low back injury.

The Kansas Court of Appeals, however, held the Fund was not responsible for claimant's low back injury as respondent failed to show it hired claimant with knowledge of her preexisting low back condition. The Court of Appeals wrote, in part:

The issue of responsibility for benefits for Quandt's back condition arose in the review and modification proceedings. Since an award made in the review and

¹ Stacy Parkinson of Olathe, Kansas, served as Board Member Pro Tem in place of Board Member Gary M. Korte, who recused himself from this proceeding.

modification proceedings under K.S.A. 44-528 constitutes an entirely new award (citations omitted), the burden remained on IBP to establish a basis for shifting responsibility for Quandt's back injury to the Fund. While IBP was able to shift liability to the Fund for Quandt's neck and knee injuries by showing that it hired Quandt knowing of her prior neck and knee injuries, to shift the responsibility to the Fund for Quandt's new back award, IBP was required to make a similar showing. IBP made no such showing.

IBP's reliance on *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972), does not advance its cause. The court stated in *Jackson* that "every natural consequence that flows from the [compensable] injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury." 208 Kan. at 643. *Jackson* did not involve the Fund. The Fund's liability for Quandt's back injury is derivative and only becomes primary upon IBP satisfying the requirements of K.S.A. 44-567. (Citation omitted.) The principle expressed in *Jackson* imposes liability on IBP for Quandt's back injury unless IBP can establish grounds for shifting that liability to the Fund.

Here, the Board assessed liability for Quandt's back condition to the Fund when there had been no showing that IBP satisfied the liability-shifting requirements of K.S.A. 44-567. Accordingly, there is no rational basis for its conclusion that the Fund is liable for Quandt's lower back condition. We must, therefore, reverse the Board's order imposing liability for Quandt's lower back condition on the Fund.²

Consequently, the Kansas Court of Appeals remanded this claim to the Board to absolve the Fund of liability for claimant's low back condition. The Court of Appeals affirmed the other findings and conclusions set forth in the Board's April 14, 2006, Order.

AWARD

WHEREFORE, the Board modifies its April 14, 2006, Order and assesses the entire liability for claimant's low back injury to respondent. All other findings and conclusions set forth in the Board's April 14, 2006, Order remain in full force and effect.

IT IS SO ORDERED.

² *Quandt v. IBP*, 38 Kan. App. 2d 874, 882-883, 173 P.3d 1149, rev. denied ____ Kan. ____ (2008).

Dated this ____ day of June, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent
Derek R. Chappell, Attorney for Fund
Brad E. Avery, Administrative Law Judge